NOV 16 1920
JAMES D. MAHER
CLERK

# In the Supreme Court

of the

# United States

OCTOBER TERM, 1920.

No. [redacted]160

PACIFIC MAIL STEAMSHIP COMPANY,
*Petitioner,*

vs.

J. LUCAS,
*Respondent.*

## BRIEF FOR RESPONDENT.

FREDERICK CLAYTON PETERSON,
544 Market St., San Francisco,
*Proctor for Respondent.*

THE RECORDER COMPANY, [redacted] 900 STEVENSON ST., S. F.

# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1920.

No. 595.

PACIFIC MAIL STEAMSHIP COMPANY,

*Petitioner,*

vs.

J. LUCAS,

*Respondent.*

## BRIEF FOR RESPONDENT.

A misconception of the facts in the present matter has lead petitioner to believe that a question of such gravity and importance is presented as to warrant the issuance of a writ of *certiorari* by this Court. And a misconception both of law and fact found in former rulings and of the law applicable to the facts in the present matter has led petitioner to believe that such lack of uniformity of ruling exists as to warrant the issuance of a writ of *certiorari* by this Court. If the question involved be not one of gravity or importance or one wherein rulings have not been uniform then, of course, the case is not one wherein the power of this Court to issue *certiorari* will be exercised. (*Warner* vs. *City of New Orleans*, 167 U. S. 474; 17 Sp. Ct. Rep. 892-95.)

## MISCONCEPTION OF PETITIONER AS TO FACTS.

Petitioner, as libelee, claimed that the libelant feigned illness (Pet., p. 3); that libelant refused to remain aboard ship (Pet., p. 3); that he demanded his wages in full, was discharged, and signed a mutual release (Pet., p. 5); that he went ashore without the consent of libelee (Pet., p. 5).

Needless to say, all these were disputed matters between the parties. The libelant claimed that he was actually ill (Tr., pp. 34-36-41); that he neither asked for nor received a discharge (Tr., pp. 37-38-45-46-47-54-55-58-59-60); that he went ashore to the hospital by mutual consent (Tr., pp. 34-38-44-45-47-48-52); that he never signed a mutual release as such (Tr., pp. 37 to 60). The petition is replete with petitioner's version of the facts as the facts in the case, whereas both lower courts believed the libelant and disbelieved the libelee, and resolved the facts in favor of the libelant. The District Court in this connection said (Tr., p. 100):

> "Libelant was ailing when he left the ship at Honolulu. The ship's doctor and the master were willing that he should go to the Marine Hospital there, and the master gave him the necessary permit. He neither sought nor desired a discharge, and says that he was only asked to sign for his wages, which he received. There is no reason to believe that he was maligning. * * *"

And the Circuit Court of Appeals reached the same conclusion (Tr., p. 124):

> "There is no evidence that the appellee read the instrument which he signed, or that its contents were explained to him, or that he received a discharge, or that the word 'discharge' was ever mentioned in his presence. No deposition was taken of the commissioner. The captain's testimony is vague, and that his memory was not reliable is shown * * * Considering all the circumstances we are not convinced that the trial court was in error in holding that the appellee neither sought nor desired a discharge, but was only asked to sign for his wages."

We are, therefore, presented with a case wherein a seaman falls ill aboard ship and goes ashore for hospital treatment by and with the consent of the master of the ship. Whether or not a seaman may desert a ship that is properly equipped with medical and hospital facilities and demand hospital treatment ashore is not involved in the present case. And therefor the authorities cited by petitioner, *The Iroquois*, 194 U. S. 240; 24 Ruling Case Law, 1287; *The Bouker No. 2*, 241 Fed. 831; *Santa Barbara*, 263 Fed. 369) have no application to the facts in this case. The perils to navigation and passengers on ship depicted by petitioner as a result of refractory seamen feigning illness, deserting a ship properly equipped with medical and hospital facilities, and without regard to their contractual relations and the safety of passengers, the ship and its cargo (Pet., p. 8) demanding to be set ashore for hospital treatment, and further, demanding wages to the end of the voyage, maintenance, and cure, and justifying their conduct upon the ruling in *Pacific Mail Steamship Co.* v. *Lucas*, 264 Fed. 938,

are all imaginary, and not founded upon the law or facts of the case.

The case simply holds that where a seaman goes ashore for hospital treatment by and with the consent of the master of the ship, and is by such master furnished with the necessary hospital certificate, that the same rules prevail as where a sick seaman continues on the voyage and has the benefit of the hospital and medical facilities furnished aboard ship.

MISCONCEPTION OF PETITIONER AS TO LAW.

Petitioner claims that the ruling complained of is contrary to and opposed to the previous rulings wherein a mutual release has been held to be final and conclusive. The Massachusetts case of *Rosenberg* vs. *Doe*, 146 Mass. 191; 15 N. E. 510 is cited. That case appears in the Massachusetts reports in two phases; one in 146 Massachusetts, wherein defendant's exceptions to a verdict in favor of the plaintiff were sustained upon the ground that the Court had instructed the *jury* too broadly. On the retrial (148 Mass. 20 N. E. 176) plaintiff testified that he thought that a mutual release signed by him was a mere receipt for the money actually received. Notwithstanding the mutual release the jury rendered its verdict in favor of the plaintiff and defendants again alleged exceptions. These exceptions were overruled by the same judge who rendered the opinion in the earlier decision. The latter decision is plain authority for the proposition that such mutual releases in a common law court—following common law procedure—are

not final and conclusive. In both reports it is shown that common law procedure was followed.

Petitioner cites the cases of *Raymond* vs. *Ellen S. Taylor*, 40 Fed. 902; *The Pennsylvania*, 98 Fed. 744; *Pettison* vs. *Empire Tspn. Co*, 111 Fed. 931; *Domenico* vs. *Alaska P. Assn*, 112 Fed. 540-60 (Pet., p. 10) as opposed to the present ruling. Those cases were all cases wherein the seamen concerned executed mutual releases as mutual releases with full cognizance and apprisal of their nature and contents. In each case a mutual release was signed upon discharge. In the present case the libelant did not sign the so-called mutual release as a mutual release, but simply as a receipt for his wages to the date thereof. It was not signed at the time of discharge, and as held by the lower courts and as disclosed by the record no discharge, as a matter of fact, was ever given respondent.

Apart from case law bearing upon mutual releases the pertinent statutory law has been overlooked by petitioner, although same was presented to the lower courts. Under Section 4552 of the Revised Statutes of the United States we find this provision:

> "that upon the completion before a Commissioner of any discharge and settlement the master and owner and each seaman respectively in the presence of the Shipping Commissioner shall sign a mutual release of all claims for wages in respect of the past voyage or engagement."

And Subdivision 4 of the quoted Section reads as follows:

> "In cases in which discharge and settlement before a Shipping Commissioner are required no payment, receipt, settlement, or discharge, otherwise made, shall operate as evidence of the release or satisfaction of any claim."

In other words, the mutual release is dependent upon the discharge being completed in accordance with the statutory requirements. We find that no discharge, and no certificate of discharge was ever given respondent, and it accordingly follows that the statutory requirements were not observed, hence the mutual release relied upon is nugatory as evidence of the release or satisfaction of any claim. It was not signed as a mutual release, and it was not signed upon the completion of any discharge.

In the matter of mutual releases it has been the invariable practice and procedure of Admiralty Courts to apply broad general principles of equity:

> *Domenico* vs. *Alaska P. Assn.*, 112 Fed. 554-60.
>
> "The Principle, broadly stated, is this: that Courts of Admiralty are not bound in the decision of cases before them by technical rules, but are governed by enlarged views of equity and justice. And as seamen are usually improvident and often ignorant of their rights, they are frequently tempted by their necessities to take less than is due them * * * And it would not be in accordance with equity to hold that the receipt of less than was due them is a bar to recovery of the full amount they were entitled to receive according to the terms of the contract * * *"

And these broad general principles have received the support of express statutory enactment which was presented to and considered by the lower courts, and which petitioner entirely overlooked. Reference is now being made to the provisions of Sec. 4530 of the Revised Statutes of the United States (Sec. 8322, p. 8818, U. S. Compiled Statutes 1916). The particular portion thereof material to the point under discussion was enacted in 1915—long subsequent in date to the decisions cited by petitioner—and reads as follows:

> "* * * provided further, that notwithstanding any release signed by any seaman under Section forty-five hundred and fifty-two of the Revised Statutes, any Court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require."

## Conclusion.

The ruling complained of simply holds, therefore, that where a seaman falls ill while on his ship and by and with the consent of the master is permitted to go ashore for hospital treatment and is provided with the necessary hospital certificate by the master that the same rule prevails as where a seaman falls ill on the ship and partakes of the medical and hospital facilities provided by the ship, to-wit, the seaman is entitled to wages to the end of the voyage, maintenance and cure. On the question of mutual release the present ruling simply holds that a mutual release not executed in conformity with statutory requirements, and not intended to operate as a mutual release may in a Court of Admiralty, applying equity principles, be disregarded. And apart from these

general principles we find express statutory provision not only permitting but requiring that under such circumstances the mutual release be disregarded.

It is therefore respectfully submitted that neither gravity, importance, nor uniformity of ruling are involved in the matter presented by the record and the petition for a writ of *certiorari* herein; that upon the facts as found by the two lower courts and supported by the record, no error whatever appears; and that the petition herein for a writ of *certiorari* should be denied.

Dated San Francisco, November 6th, 1920.

FREDERICK CLAYTON PETERSON,
*Proctor for Respondent.*